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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/207,634    12/09/98    BERKE

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EXAMINER

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BINGHAM FARMS MI 48025

ART UNIT

PAPER NUMBER

3618

10

DATE MAILED: 04/16/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/207,634**

Applicant(s)  
**Berke et al.**

Examiner  
**Bridget Avery**

Group Art Unit  
**3618**



☒ Responsive to communication(s) filed on Mar 29, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 5-14 and 20-28 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 11 is/are allowed.

☒ Claim(s) 5-10, 12-14, and 20-28 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### DETAILED ACTION

1. In response to applicant's request for reconsideration and the submission of the English translation of the Mascio (Italy 574172) reference, the finality of the previous office action has been withdrawn. An action on the merits of claims 5-14 and 20-28 follows.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5-8, 10, 20, 21 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj (US Patent 5,697,624) in view of White (US Patent 5,621,950).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

White discloses a detachable carrier having a pair of elongated jaws (12, 14), a means (16) for clamping the jaws (12, 14) to and releasing the jaws (12, 14) from an upper portion of a bag

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or sack, a handle (32), having a closed loop (36), attached to at least one of the jaws (14), and, a gripping surface (20, 24) including a plurality of small triangular, outward extending portions (38) for retaining and supporting a closed bag or sack.

Based on the teachings of White, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Arias et al. (US Patent 4,261,447).

Faraj and White disclose the features described above.

Faraj and White fail to disclose an adjustable shelf.

Asias et al. discloses a suitcase cart having a base legs (40) with telescoping tubes (54).

Based on the teachings of Asias et al., it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include an adjustable shelf with telescoping tubes to support items of various sizes.

5. Claim 12 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Smith (US Patent 4,044,784).

Faraj and White disclose the features described above.

Faraj and White fail to disclose a cart having an adjustable height.

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Smith discloses an adjustable height walking aid cane.

Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of varying heights.

6. Claim 14 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith (US Patent 4,044,784).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30).

White discloses a detachable carrier having a pair of elongated jaws (12, 14), a means (16) for clamping the jaws (12, 14) to and releasing the jaws (12, 14) from an upper portion of a bag or sack, a handle (32), having a closed loop (36), attached to at least one of the jaws (14), and, a gripping surface (20, 24) including a plurality of small triangular, outward extending portions (38) for retaining and supporting a closed bag or sack.

Smith discloses an adjustable height walking aid cane.

Based on the teachings of White, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of varying heights.

7. Claims 5-8, 10, 13 and 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of Brown (US Patent 5,301,393).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

Brown discloses a detachable carrier having a pair of elongated jaws (20, 18), a means (24, 26) for clamping the jaws (20, 18) to and releasing the jaws (20, 18) from an upper portion of a bag or sack, an integral handle portion (12), having a closed loop (14), attached to at least one of the jaws (18), outwardly extending bosses (28), which bosses (28) are received or accommodated in through holes (30), and, a gripping surface (18) including a plurality of small outward extending portions (40) for retaining and supporting a closed bag or sack. With respect to claim 22, it is noted that Brown's clip is constructed of all metal (see column 1, lines 66) therefore the metal strip claimed by applicant is shown as an integral feature with the jaws of Brown. With respect to claim 23, see column 5, lines 51-54. Note, the bosses and holes, taught by Brown, are functionally equivalent to the applicant's claimed bolt and thumb nut. The

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selection of any of these known equivalents to attach elements would be within the level of ordinary skill in the art.

Based on the teachings of Brown, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

- ✓ 8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Arias et al. (US Patent 4,261,447).

Faraj and Brown disclose the features described above.

Faraj and Brown fail to disclose an adjustable shelf.

Asias et al. discloses a suitcase cart having a base legs (40) with telescoping tubes (54).

Based on the teachings of Asias et al., it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and Brown to include an adjustable shelf with telescoping tubes to support items of various sizes.

- ✓ 9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Smith (US Patent 4,044,784).

Faraj and Brown disclose the features described above.

Faraj and Brown fail to disclose a cart having an adjustable height.

Smith discloses an adjustable height walking aid cane.

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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and Brown to include a support body where the height is adjustable using telescoping tubes to accommodate users of various heights.

✓ 10. Claim 14 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith (US Patent 4,044,784).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

Brown discloses a detachable carrier having a pair of elongated jaws (20, 18), a means (24, 26) for clamping the jaws (20, 18) to and releasing the jaws (20, 18) from an upper portion of a bag or sack, an integral handle portion (12), having a closed loop (14), attached to at least one of the jaws (18), outwardly extending bosses (28), which bosses (28) are received or accommodated in through holes (30), and, a gripping surface (18) including a plurality of small outward extending portions (40) for retaining and supporting a closed bag or sack.

Smith discloses an adjustable height walking aid cane.

Based on the teachings of Brown, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.



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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of various heights.

*Allowable Subject Matter*

11. Claim 11 is allowed.

*Response to Arguments*

12. Applicant's arguments with respect to claims 5-14 and 20-28 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Comeaux shows a garbage bag support and storage device.

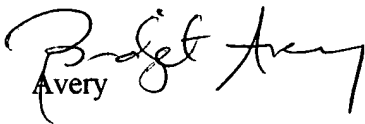
Tseng shows a paper holder.

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14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number (703) 308-2086.

  
Avery

April 12, 2001

 4/13/01  
ANNE MARIE BOEHLER  
Primary Examiner